IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

WP(C).No. 13865 of 2007(A)

AGAINST THE ORDER DATED 09/03/2007 IN AP.133/2000 IN EP.6/2005 of III ADDL. DISTRICT COURT, KOLLAM

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PETITIONER:

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1. C.M.MOHANAN, S/O.CHELLAPPAN NAIR, SREEVILASOM, ULIYAKOVIL, KOLLAM.

2. P.RAMACHANDRAN, S/O.PARAMU NAIR, MANGALATHU VEEDU, THAZHATHUCHERY, KOOTTIKKADA, MAYYANADU, KOLLAM.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)
SRI.S.HARIKRISHNAN

RESPONDENTS:

MAHARASHTRA APEX CORPORATION LTD., REP. BY THE POWER OF ATTORNEY HOLDER P.BHARGAVAN S.N.SADANAM, MUKKOODU, MULAVANA VILLAGE, KUNDARA.

BY ADV. SRI.P.SHRIHARI
SMT.P.VANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).13865/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- A TRUE COPY OF THE ORDER DATED 9.3.07 IN E.A.68/2006 IN E.P.6/2005 IN A.P.133/200 OF THE THIRD ADDITIONAL DISTRICT COURT, KOLLAM

EXT.P2- A TRUE COPY OF THE AFFIDAVIT FILED BY THE RESPONDENT 22.2.2007.

EXT.P3- A TRUE COPY OF THE AFFIDAVIT FILED BY PETITIONERS ON 3.3.2007.

(TRUE COPY)

P.A TO JUDGE

M.N.KRISNAN, J.

W.P.(C). 13865/2007

Dated this 12th day of September, 2007

JUDGMENT

This writ petition is preferred against the order of the IIIrd Additional District Judge, Kollam, directing issuance of warrant against the judgment debtors 1 and 2. It was an application filed to detain the said judgment debtors in civil prison for refusal to pay the amount in spite of having means.

2. According to the decree holder, the first judgment debtor is a manager of cashew factory having monthly income of Rs.7,000/- and second judgment debtor is a businessman at Madras having a monthly income of Rs.25,000/-. But both the judgment debtors denied the same. The power of attorney holder of the decree holder was examined. No document is produced to show regarding the capacity or means to pay the amount by the judgment debtors. The Court below simply accepted the evidence of PW1 and ordered arrest. It is the civil liberty of a person that is being curtailed and Section 51 of CPC mandates that the Court must be satisfied about the

means of the person and also the intentional negligence of that persons to wipe of the liability.

3. In this case, the first judgment debtor entered the box and tendered evidence denying the evidence of PW1. If a person is alleged to be a manager of a cashew factory it can be proved by production of documents. The judgment debtor cannot prove the negative whereas decree holder can prove the positive. Just because one is young and healthy, Section 51 does not contemplate arrest of the person. Therefore, I am not satisfied with the evidence tendered in this case regarding the means of the judgment debtors. But at the same time an opportunity can be given to the decree holder to adduce evidence by production of documents if available, to prove the means of the judgment debtors.

4. Therefore, the order under challenge is set aside and the matter is remitted back to the Executing Court and it is directed to dispose of the matter after affording an opportunity to both sides to adduce

evidence in support of their respective contentions. Parties are directed to appear before the Court below on 23.10.2007.

The writ petition is disposed of accordingly.

M.N.KRISHNAN,
JUDGE

mrcs